706; *In re Wilson,* 123 Fed. 20, (*Vide* cases cited in instant case). If it is not fraudulent for an individual debtor to convert property which is not exempt into that which is, it is not fraudulent for individuals constituting a partnership to sever the joint interest in partnership property, which is not yet in the custody of the law, and thereafter to hold their exemptions out of such property. *Goudy* v. *Werbe,* 117 Ind. 154; *Mortley* v. *Flanagan,* 38 Ohio St. 401; *Lee* v. *Bradley Fertilizer Co.,* 44 Fla. 787; *Fairfield Shoe Co.* v. *Olds,* 176 Ind. 526; *In re Phillips,* 209 Fed. 490, 492; *Bates* v. *Callender,* 3 Dak. 256, 16 N. W. 506; *In re Bjornstad,* Fed Cas. 1453.

BANKRUPTCY.—PROVABILITY OF RIGHT OF ACTION IN TORT OR IN CONTRACT. —In an action for damages against a physician for mal-practice, discharge in bankruptcy being duly pleaded, *held,* that since the plaintiff at his optnoi, prior to the bankruptcy proceedings, might have sued defendant either in an action *ex delicto* or *ex contractu,* the claim was, therefore, provable under the Bankruptcy Act of 1898. § 63a (4) and hence was discharged by defendant's bankruptcy. *Reinhardt* v. *Friederich* (Ind. App. 1915) 108 N. E. 258.

In the case *Matter of John Wigmore & Sons Co.,* 10 Am. B. R. 661 (1903) petitioner sought to have the court liquidate a claim for personal injuries arising out of the failure of the bankrupt, in accordance with the contract of employment, to furnish safe appliances to petitioner while the latter was in bankrupt's employ. The court, disregarding the protests of petitioner that his declaration drawn under the Code of California was an action *ex contractu,* held it to be drawn on the theory of tort liability, and—since the tort was not such as could be waived and general *assumpsit* substituted therefor on the ground of unjust enrichment of the tort-feasor's estate at the expense of the petitioner—held that it was not a provable claim within the class of "debts founded upon open accounts, contracts, express or implied." The instant case, to the contrary, recognizes the fact that suit at the outset might have been brought either for negligence or for breach of contract to render services with customary skill, and relying upon *Crawford* v. *Burke,* 195 U. S. 176, holds that the claim is provable in bankruptcy. The latter case was one of conversion of personalty by the bankrupt and the court decided that since the true owner might have waived the tort and sued on an implied contract, for that reason the claim was provable in bankruptcy proceedings. Accord: *Cole* v. *Roach,* 37 Texas 413; *Weaver* v. *Voils,* 68 Ind. 191; *Clarke* v. *Rogers,* 185 Fed. 518, 521; *Tindle* v. *Birkett,* 205 U. S. 183; *In re Filer,* 125 Fed. 261; *In re Hirschman,* 104 Fed. 69. All of these are cases in which the provable quasi-contract arose out of the unjust enrichment of the defendant, and it has been said (REMINGTON, BANKRUPTCY, § 636) that the rule of *Crawford* v. *Burke,* applies only in such cases. But the principal case holds, extending the rule of *Crawford* v. *Burke,* that where one has a cause of action of a dual nature, capable of being enforced either by an action *ex contractu* or *ex delicto,* it is provable in bankruptcy whether the tort liability is such as would support a *quasi* contractual action or not. Indeed, the nature of the tort liability is a matter of indifference if the contractual element be present in any form.